

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rulemaking related to standards of practice for physicians who perform or induce abortions and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 2023 Iowa Acts, House File 732.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 732.

Purpose and Summary

The proposed rule is directed by 2023 Iowa Acts, House File 732, to outline the standards of practice for physicians who perform or induce abortions, including the detection of a fetal heartbeat, exceptions, and discipline.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board under 653—Chapter 3 for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Chrissy Greco
Iowa Board of Medicine
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.242.6039
Fax: 515.242.5908
Email: chrissy.greco@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

January 4, 2024
10 a.m. to 12 noon

6200 Park Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** rule 653—13.17(135L,146A,146E,147,148,272C):

653—13.17(135L,146A,146E,147,148,272C) Standards of practice for physicians who perform or induce abortions—definitions—detection of fetal heartbeat—fetal heartbeat exceptions—discipline.

13.17(1) Standards of practice. This rule sets forth the standards of practice for physicians who perform or induce abortions. More information is contained in Iowa Code section 146E.2(5) as enacted by 2023 Iowa Acts, House File 732.

13.17(2) Definitions. As used in this rule:

“*Private health agency*” means any establishment, facility, organization, or other entity that is not owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, or other entities that are health care providers include the following:

1. A hospital as defined in Iowa Code section 135B.1;
2. A health care facility as defined in Iowa Code section 135C.1;
3. A health facility as defined in Iowa Code section 135P.1; or
4. A similar entity that either is a health care provider or employs or provides the services of a health care provider.

“*Public health agency*” means any establishment; facility; organization; administrative division; or entity that is owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, administrative divisions, or other entities that are health care providers include the following:

1. A hospital as defined in Iowa Code section 135B.1;
2. A health care facility as defined in Iowa Code section 135C.1;
3. A health facility as defined in Iowa Code section 135P.1; or
4. A similar entity that either is a health care provider or employs or provides the services of a health care provider.

“*Standard medical practice*” means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732, and this rule, “standard medical practice” includes employing the appropriate means of detection depending on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

“*The pregnancy is the result of a rape*” means a circumstance in which the pregnancy is the result of conduct perpetrated against a female that would be a prosecutable offense under Iowa Code section 709.2, 709.3, 709.4, or 709.4A.

“*The pregnancy is the result of incest*” means a circumstance in which a sex act occurs between closely related persons that involves a vaginal penetration that causes a pregnancy. The closely related persons must be related, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew. For purposes of this rule, a closely related person includes a stepparent, stepchild, or stepsibling, including siblings through adoption.

13.17(3) *Detection of fetal heartbeat.* A physician who intends to perform or induce an abortion must determine via abdominal ultrasound whether the woman is carrying an unborn child with a detectable fetal heartbeat.

a. Obligation. The obligation under this rule requires a bona fide effort to detect a fetal heartbeat in the unborn child. This effort must be made in good faith and according to standard medical practice and reasonable medical judgment.

b. Method. Consistent with standard medical practice and reasonable medical judgment, the physician shall perform an exterior abdominal ultrasound on the woman to determine whether the unborn child has a detectable fetal heartbeat. This exterior abdominal ultrasound shall be performed with real-time ultrasound equipment with a transducer of appropriate frequency. The equipment must be properly maintained and in proper functioning order. At minimum, the exterior abdominal ultrasound shall examine the full region of the woman’s body between the chest and pelvis, including the side flanks between the rib cage and hips.

13.17(4) *Fetal heartbeat exceptions.* The following applies to a physician who intends to perform or induce an abortion under a fetal heartbeat exception as defined in Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732, and this rule:

a. Incest or rape. If a pregnancy is the result of incest or a rape, the woman seeking an abortion may report the incest or the rape within the appropriate time frame to a licensed physician whose services are retained for an abortion procedure.

(1) To determine whether the pregnancy is the result of incest, a physician who intends to perform or induce an abortion must gather the following information from the woman seeking an abortion:

1. Did a sex act occur between the woman and a closely related person, meaning, related, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, nephew, stepparent, stepchild, stepsibling, or an adopted sibling?
2. On what date did the sex act that caused the pregnancy occur?
3. If initial reporting was to someone other than the physician who intends to perform or induce an abortion, on what date was the act reported to a law enforcement agency, public health agency, private health agency, or family physician?

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for incest applies. This information shall be documented in the woman’s medical records.

The physician who intends to perform or induce an abortion may rely on the information provided by the woman seeking an abortion upon a good-faith assessment that the woman is being truthful. The physician who intends to perform or induce an abortion may require the woman to sign a certification form attesting that the information she gave was true and accurate to the best of the woman’s understanding.

(2) To determine whether the pregnancy is the result of a rape, a physician who intends to perform or induce an abortion must gather the following information from the woman seeking an abortion:

1. On what date did the sex act that caused the pregnancy occur?
2. What was the age of the woman seeking an abortion at the time of that sex act?
3. Did the sex act constitute a rape?
4. Was the rape perpetrated against the woman seeking an abortion?

5. If initial reporting was to someone other than the physician who intends to perform or induce an abortion, on what date was the rape reported to a law enforcement agency, public health agency, private health agency, or family physician?

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for rape applies. This information shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information as provided by the woman seeking an abortion upon a good-faith assessment that the woman is being truthful. The physician who intends to perform or induce an abortion may require the woman to sign a certification form attesting that the information she gave was true and accurate to the best of the woman's understanding.

b. Fetal abnormality. A certification from an attending physician that a fetus has a fetal abnormality that in the attending physician's reasonable medical judgment is incompatible with life must contain the following information:

- (1) The diagnosis of the abnormality;
- (2) The basis for the diagnosis, including the tests and procedures performed, the results of those tests and procedures, and why those results support the diagnosis; and
- (3) A description of why the abnormality is incompatible with life.

The diagnosis and the attending physician's conclusion must be reached in good faith following a bona fide effort, consistent with standard medical practice and reasonable medical judgment, to determine the health of the fetus. The certification must be signed by the attending physician. A physician who intends to perform or induce an abortion may rely in good faith on a certification from an attending physician if the physician who intends to perform or induce an abortion has a copy of the certification. The certification must be included in the woman's medical records by the physician who intends to perform or induce an abortion.

13.17(5) Discipline. Failure to comply with this rule or the requirements of Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732, may constitute grounds for discipline.

This rule is intended to implement Iowa Code chapter 146E as enacted by 2023 Iowa Acts, House File 732.